

REMARKS

This Amendment is submitted in reply to the Final Office Action dated January 4, 2010. The Office Action provided a three-month shortened statutory period in which to respond, ending on April 4, 2010. Accordingly, this Amendment is timely submitted. Applicant does not believe there to be any fees due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 50-4498 in the name of Nestle Nutrition.

Claims 12-13, 16-21, 24 and 27-31 are currently pending. Claims 1-11, 14-15, 22-23 and 25-26 were previously canceled without prejudice or disclaimer, and Claim 27 was previously withdrawn from consideration. In the Office Action, Claims 12-13, 16-21 and 28-31 are rejected under 35 U.S.C. §103. The Patent Office states that Claim 24 is allowable. In response, Claims 12, 16, 18-19, 21, 28-29 and 31 have been amended. These amendments do not add new matter. Applicant does not acquiesce in the correctness of the rejections or objections and reserves the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application. In view of the amendments and/or for the reasons set forth below, Applicant respectfully submits that the rejections should be withdrawn.

In the Office Action, Claims 12-13, 16-18 and 28-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over “Effect of supplements of partially hydrolyzed guar gum on the occurrence of constipation and use of laxative agents” to Patrick et al. (“*Patrick*”) in view of U.S. Patent No. 5,322,836 to Tomita et al. (“*Tomita*”). Applicant respectfully submits that the cited references are deficient with respect to the present claims.

Currently amended independent Claims 12 and 16 recite, in part, a nutritional or pharmaceutical composition comprising: a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition; and a second compound comprising proanthocyanidins.

Currently amended independent Claim 18 recites, in part, a method comprising administering to a mammal a composition comprising: a first compound selected from the

group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein said mammalian cells are those of the gut and intestinal mammalian cells, and wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition; and a second compound comprising proanthocyanidins.

Currently amended independent Claim 28 recites, in part, a method comprising adding to the nutritional or pharmaceutical composition a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the mammalian cells are mammalian gut or intestinal epithelial cells, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition; and adding to the nutritional or pharmaceutical composition a second compound comprising proanthocyanidins.

Similarly, currently amended independent Claim 29 recites, in part, a method comprising adding to the nutritional or pharmaceutical composition a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition; and adding to the nutritional or pharmaceutical composition a second compound comprising proanthocyanidins. These amendments do not add new matter. The amendments are supported in the specification at, for example, page 8, lines 14-15. In contrast, Applicant respectfully submits that *Patrick* and *Tomita* fail to disclose each and every element of the present claims.

Patrick and *Tomita* fail to disclose or suggest to disclose or suggest a nutritional or pharmaceutical composition comprising a second compound comprising proanthocyanidins as required, in part, by independent Claims 12, 16, 18 and 28-29. The Patent Office asserts that *Patrick* discloses a composition containing about 2.5% to about 10% by weight of partially hydrolyzed guar gum. See, Office Action, page 5, lines 15-20. However, *Patrick* is entirely directed to administering partially hydrolyzed guar gum with fluid as a soluble fiber for treating constipation. See, *Patrick*, page 913, column 1, paragraphs 1-4; page 914, column 1, paragraph 5. Nowhere does *Patrick* disclose administering an additional compound such as proanthocyanidins along with its partially hydrolyzed guar gum. Therefore, *Patrick* fails to

disclose a second compound comprising proanthocyanidins as required, in part, by Claims 12-13, 16-18 and 28-30.

Since *Patrick* fails to disclose each and every element of the present claims, the Patent Office cites *Tomita* for the disclosure of compositions containing bovine lactoferrin to promote the proliferation of bacteria. See, Office Action, page 6, lines 6-10. However, *Tomita* is entirely directed to agents such as lactoferrin that may be used to promote the growth and survival of bacteria. See, *Tomita*, Abstract. Nowhere does *Tomita* disclose administering an additional compound such as proanthocyanidins along with its partially hydrolyzed guar gum. Therefore, *Tomita* also fails to disclose a second compound comprising proanthocyanidins as required, in part, by Claims 12-13, 16-18 and 28-30.

For at least the reasons set forth above, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims. Thus, Applicant submits that Claims 12-13, 16-18 and 28-30 are novel, nonobvious and distinguishable over the cited references.

Accordingly, Applicant respectfully requests that the rejection of Claims 12-13, 16-18 and 28-30 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claim 31 is rejected under 35 U.S.C. §103(a) as being unpatentable over “Chitosan oligosaccharides, dp 2-8, have prebiotic effect on the *Bifidobacterium bifidum* and *Lactobacillus* sp.” to Lee et al. (“*Lee*”) in view of U.S. Patent No. 6,399,124 to Lesens et al. (“*Lesens*”). Applicant respectfully submits that the cited references are deficient with respect to the present claims.

Currently amended independent Claim 31 recites, in part, a method comprising administering to said mammal a composition comprising a therapeutically effective amount of a compound selected from the group consisting of caseinoglycomacropeptides (CGMP), chito-oligosaccharides, and combinations thereof, wherein the composition comprises a caloric content of less than about 1000 kcal. This amendment does not add new matter and is supported in the specification at, for example, page 10, line 29-page 11, line 2. In an embodiment, the present method includes administration of a low calorie meal replacement or other nutritional product. In the case of a meal replacement or other nutritional product, the composition administered may be low fat. As such, suitable low calorie, low fat products may include, for

example, juices, smoothies, and other foods. See, specification, page 10, line 29-page 11, line 2. Applicant respectfully submits that *Lee* and *Lesens* are deficient with respect to the present claims.

For example, *Lee* and *Lesens* fail to disclose or suggest a method comprising administering to said mammal a composition comprising a therapeutically effective amount of a compound selected from the group consisting of caseinoglycomacropeptides (CGMP), chito-oligosaccharides, and combinations thereof, wherein the composition comprises a caloric content of less than about 1000 kcal as required, in part, by independent Claim 31. Instead, *Lee* is entirely directed to *in vitro* testing of chitosan oligosaccharides and its growth stimulatory effect on bacteria. See, *Lee*, Abstract; Section 2 Methods and Materials. Accordingly, *Lee* is not even directed to the administration of compositions having prebiotics, let alone the administration of a composition having prebiotics and a low calorie and low fat content as required, in part, by independent Claim 31.

Lesens is entirely directed to a frozen dessert based on an ice cream containing lactic acid bacteria and having a coating thereon. See, *Lesens*, Abstract. Accordingly, since *Lesens* is entirely directed to a frozen dessert based on an ice cream, *Lesens* fails to even consider a composition comprising a caloric content of less than about 1000 kcal as required, in part, by independent Claim 31.

For at least the reasons set forth above, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims. Thus, Applicant submits that Claim 31 is novel, nonobvious and distinguishable over the cited references.

Accordingly, Applicant respectfully requests that the rejection of Claim 31 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claims 12-13, 16-21 and 28-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over “The prebiotic effects of biscuits containing partially hydrolysed guar gum and fructo-oligosaccharides – a human volunteer study” to Tuohy et al. (“*Tuohy*”) in view of *Tomita*. Applicant respectfully submits that the cited references are deficient with respect to the present claims.

As discussed above, currently amended independent Claims 12, 16, 18, 28 and 29 recite, in part, compositions comprising a first compound selected from the group consisting of methyl

manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins.

Currently amended independent Claim 19 recites, in part, a method comprising administering to said mammal a composition comprising: a therapeutically effective amount of a compound selected from the group consisting of methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the compound by total weight of the composition. Applicant respectfully submits that the cited references fail to disclose or suggest each and every element of the present claims.

As previously discussed, *Tomita* fails to disclose or suggest compositions comprising a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins. Instead, *Tomita* is entirely directed to agents such as lactoferrin that may be used to promote the growth and survival of bacteria. See, *Tomita*, Abstract. Nowhere does *Tomita* disclose administering an additional compound such as proanthocyanidins along with its partially hydrolyzed guar gum. Therefore, *Tomita* also fails to disclose a second compound comprising proanthocyanidins as required, in part, by Claims 12-13, 16-18 and 28-30.

Tuohy fails to remedy the deficiencies of *Tomita* with respect to independent Claims 12, 16, 18, 28 and 29 because *Tuohy* also fails to disclose or suggest compositions comprising a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins. Instead, *Tuohy* is entirely directed to administration of biscuits comprising partially hydrolysed guar gum and fructooligosaccharides. See, *Tuohy*, Abstract. Nowhere does *Tuohy* disclose administering an additional compound such as proanthocyanidins along with its partially hydrolyzed guar gum. Therefore, *Tuohy* also fails to disclose a second compound comprising proanthocyanidins as required, in part, by Claims 12-13, 16-18 and 28-30.

With respect to independent Claim 19, neither *Tomita* nor *Tuohy* disclose or suggest methods comprising administering to said mammal a composition comprising: a therapeutically effective amount of a compound selected from the group consisting of methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof as required, in part, by independent Claim 19. Instead, the disclosures of *Tomita* and *Tuohy* are as discussed above.

For at least the reasons set forth above, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims. Thus, Applicant submits that Claims 12-13, 16-21 and 28-30 are novel, nonobvious and distinguishable over the cited references.

Accordingly, Applicant respectfully requests that the rejection of Claims 12-13, 16-21 and 28-30 under 35 U.S.C. §103 be reconsidered and withdrawn.

In the Office Action, Claims 12-13, 16-21 and 28-30 are rejected under 35 U.S.C. §103(a) as being obvious over *Tuohy* in view of WO 01/17365 to Russell et al. ("*Russell*"). Applicant respectfully submits that the cited references are deficient with respect to the present claims.

As discussed above, currently amended independent Claims 12, 16, 18, 28 and 29 recite, in part, compositions comprising a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins. Currently amended Claim 19 recites, in part, a method comprising administering to said mammal a composition comprising: a therapeutically effective amount of a compound selected from the group consisting of methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the compound by total weight of the composition. Applicant respectfully submits that the cited references fail to disclose or suggest each and every element of the present claims.

As discussed above, *Tuohy* fails to disclose or suggest compositions comprising a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5%

to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins as required, in part, by independent Claims 12, 16, 18, 28 and 29. *Tuohy* also fails to disclose or suggest compositions comprising: a therapeutically effective amount of a compound selected from the group consisting of methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof as is required, in part, by independent Claim 19.

Further, *Russell* fails to remedy the deficiencies of *Tuohy* because *Russell* also fails to disclose compositions comprising a first compound selected from the group consisting of methyl manno-oligosaccharides, partially hydrolysed guar gum, and combinations thereof, wherein the composition comprises about 2.5% to about 10% of the first compound by total weight of the composition, and a second compound comprising proanthocyanidins as required, in part, by independent Claims 12, 16, 18, 28 and 29; and compositions comprising: a therapeutically effective amount of a compound selected from the group consisting of methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof as is required, in part, by independent Claim 19. Instead, *Russell* is entirely directed to methods for improving the skin and coat system of a pet by administering a nutritional agent that promotes the growth of bacteria in the gastrointestinal tract. See, *Russell*, Abstract. Nowhere in the disclosure does *Russell* disclose or suggest a second compound comprising proanthocyanidins, or methyl manno-oligosaccharides, long-chain isomalto-oligosaccharides, and combinations thereof as is required, in part, by the present claims.

For at least the reasons set forth above, Applicant submits that the cited references fail to disclose or suggest each and every element of the present claims. Thus, Applicant submits that Claims 12-13, 16-21 and 28-30 are novel, nonobvious and distinguishable over the cited references.

Accordingly, Applicant respectfully requests that the rejection of Claims 12-13, 16-21 and 28-30 under 35 U.S.C. §103 be reconsidered and withdrawn.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly requests an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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Dated: January 28, 2010